



Backgrounder: NDAA

Legislative Background | Dr. Benishek's View | What Others Are Saying About NDAA | House Vote

Legislative Background:

The National Defense Authorization Act (NDAA) is a key mechanism by which the Congress of the United States fulfills its primary constitutional responsibilities. The NDAA authorizes appropriations for a 1.6% pay increase for the troops and includes a provision to clarify and reaffirm the military's responsibility and authority to detain al Qaeda terrorists.

There has been considerable concern over the detainee provision, due in large part to misinformation claiming that the NDAA expands the power of the president. This is incorrect. The President, under the Authorization for Use of Military Force (AUMF), already has the authority to detain enemy non-combatants. This authority was affirmed by the U.S. Supreme Court ruling of *Hamdi vs. Rumsfeld* (2004).

The NDAA's detainee language clarifies the policies and procedures used to detain, interrogate, and prosecute al Qaeda, the Taliban, and affiliated group. Section 1021 of the bill reaffirms the President's power to detain those people who planned or helped carry out 9/11 or members of Al-Qaeda and the Taliban. It does not expand the President's power and cannot be construed to allow the military to arrest lawful Americans. Section 1022 authorizes the military to detain members of Al Qaeda who have planned attacks on the United States and coalition partners. Language in the section expressly states this does not apply to U.S. citizens or legal residents. Section 1022 reads:

"UNITED STATES CITIZENS.—The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

(2) **LAWFUL RESIDENT ALIENS.**—The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States"

Dr. Benishek's View:

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"While I understand there are concerns about this bill, I have thoroughly researched the legislation and found that it does not expand the power of the President nor does it endanger the rights of American citizens. Instead, this legislation provides important tools in the ongoing fight against global terrorism and will help preserve our national security."

— Dr. Dan Benishek
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“I voted to support the National Defense Authorization Act (NDAA) after carefully researching the bill and learning that it does not infringe on the rights of law-abiding U.S. citizens. There was concern by some of my constituents that this bill would allow the Executive Branch to detain and interrogate American citizens, but Section 1022 of the bill explicitly states ‘the requirement to detain a person in military custody under this section does not extend to citizens of the United States.’

The bill does not expand the powers of the presidency, but only reaffirms the authority the president already has to detain certain people under the Authorization for Use of Military Force. This authority has been heard by the High Court and upheld.

In today’s world, the danger of terrorism lurks everywhere, but I believe we can provide the tools to maintain our national security without threatening the rights enshrined in our Constitution. While this bill is by no means perfect, I believe it achieves this goal.”

What Others Are Saying About NDAA:

U.S. Congressman Allen West (R-FL), Freshman Member of the Committee on Armed Services and House Conferee on H.R. 1540:

“The military has no right to detain American citizens nor legal aliens and that’s there in chapter in verse. The military does have a requirement to detain Al Qaeda, Taliban and associated forces, as well as, those who substantially support those individuals. So that United States of America is not leaning towards a police state.”

Senator Marco Rubio (R-FL), Freshman Senator:

“These two sections do the following: they affirm the authority of the executive branch to act within our national interest and they provide the federal government with the tools that are needed to maintain our national security. This bill does NOT overturn the Posse Comitatus Act; the military will not be patrolling the streets. This bill does not take away your rights as a citizen or lawful permanent resident; the authority under this act does not take away one’s habeas rights.”

House Vote:

The House version of the bill, H.R. 1540, passed the House Armed Services Committee in May by a vote of 60-1 and the full House by a vote of 322-96. The Senate passed their version, S. 1867, on Dec. 1st by a vote of 93-7. H.R. 1540 was sent to conference committee in the House by a vote of 421-2 on Dec. 7th. The House of Representatives passed the conference Report by a vote of 283-136 on Dec. 14th. The Senate passed the Conference Report by a vote of 86-13 on Dec. 15th. The President signed National Defense Authorization Act into law on Dec. 31st.